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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1734

HARRY KUBO, NISEI FARMERS LEAGUE AND WESTERN TOMATO GROWERS & SHIPPERS, INC.,
Appellants,

VS.

AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,
Appellee.

No. 75-1754

PANDOL & SONS, a California partnership; JASMINE VINEYARDS, INC., a California corporation,
Appellants,

VS.

AGRICULTURAL LABOR RELATIONS BOARD,
Appellee.

On Appeal from the Supreme Court of California

APPELLEE'S SUPPLEMENTAL BRIEF

HARRY J. DELIZONNA,
General Counsel,
ROBERT LE PROHN,
Chief of Litigation,
EILEN LAKE,
Counsel,
BYRON S. GEORGIOU,
Counsel,
Agricultural Labor Relations Board,
555 Capitol Mall, Suite 233,
Sacramento, California 95814,
Telephone: (916) 445-6668,
Attorneys for Appellee
Agricultural Labor Relations Board.

PERNAU-WALSH PRINTING CO. - 582 MISSION STREET - SAN FRANCISCO, CA 94105

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This supplemental brief is filed pursuant to Supreme Court Rule 16(5) to call the Court's attention to several new cases, decided late last term, which were not available at the time of the preparation of the Motion to Dismiss.

City of New Orleans v. Dukes, 96 S.Ct. 2513 (1976), upheld the validity of a New Orleans ordinance whose "grandfather provision" excepted certain persons from an ordinance barring pushcart vendors from parts of the city. Reaffirming the "wide latitude" accorded to states in regulating their local economies under the police power and the deference paid by the judiciary to legislative policy determinations in this sphere, the Court found that the classification met the rational relationship standard which governs both equal protection and due process claims. This non-zoning decision is further support for the proposition, recognized by the California Supreme Court, that the access rule is part of a long tradition of state regulation of private property for the public welfare under the police power. Motion to Dismiss, 13-16.

In *Massachusetts Bd. of Retirement v. Murgia,* 96 S.Ct. 2562 (1976), the Court sustained a statute requiring state police officers to retire at age 50. While recognizing that some individuals over 50 could safely function as uniformed officers, the Court held that the state was not required to undertake individualized testing in order to determine which 50-year-old officers could still perform effectively. The Court stated:

> "Since physical ability *generally* declines with age, mandatory retirement at 50 serves to remove from police service those whose fitness for uniformed work presumptively has diminished with age. This clearly is rationally related to the state's objective. There is no indication that [the statute] has the effect of excluding from service so few officers who are in fact unqualified as to

> render age 50 a criterion *wholly unrelated* to the objective of the statute." *Id.* at 2567-2568 (Emphasis added.)

Thus, a rule, rather than a case-by-case approach, was valid because the factual basis for the rule was "generally" true and not "wholly unrelated" to its objective. This holding is directly applicable to the instant case, where the ALRB adopted the access rule after concluding that "generally" unions seeking to organize agricultural employees do not have alternative channels of effective communication.[1] 8 Cal. Admin. Code §20900, subd. 3. Motion to Dismiss, 17-22.

See also, Mathews v. Lucas, 96 S.Ct. 2755, 2764 (1976), holding that the government might legitimately adopt rules in order to "avoid the burden and expense of specific case-by-case determination. . . ."

These cases illustrate this Court's continuing adherence to the legal principles supporting the validity of

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[1]The fact that unions were able to reach some farm workers before the access rule became operative on September 18, 1975 does not undercut the Board's finding that "generally" reasonable means of communication are unavailable. The vast majority of early ALRB elections took place in the Delano and Salinas areas, where agricultural unions had been organizing for over a decade. In addition, one union, the Teamsters, had access to many ranches in these areas through clauses in pre-existing contracts. Transcript of ALRB Access Hearing, Aug. 28, 1975, A-81:5-8. The rival United Farm Workers Union often utilized surreptitious access to reach workers, as evidenced by the numerous UFW organizers arrested for trespass during the months before the access regulation took effect. *Id.*, A-81:1-4.

By contrast, at most of the 78,000 farms in California, little or no labor organization has taken place.

the access regulation, and provide further reason for the Court to decline to note probable jurisdiction.

Dated: September 15, 1976.

Respectfully submitted,

HARRY J. DELIZONNA,
General Counsel,
ROBERT LE PROHN,
Chief of Litigation,
ELLEN LAKE,
Counsel,
BYRON S. GEORGIOU,
Counsel,
Attorneys for Appellee
Agricultural Labor Relations Board.